

Applic. No. 09/665,452

Amdt. dated April 6, 2004

Reply to Office action of January 6, 2004

Remarks/Arguments:

Reconsideration of the application is requested.

Claims 1 and 3-19 remain in the application. Claims 8-19 have been withdrawn from consideration.

The Examiner has incorporated by reference the rejections from the previous Office action dated May 23, 2003. Therefore, reference is made to the page numbers of that Office action.

In item 3 on page 2 of the above-identified Office action, claims 1 and 3-7 have been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art which it pertains, or with which it is most nearly connected, to make and/or use the invention.

More specifically, the Examiner has stated that there is no indication of the actual flow required to operate the transport device.

In the final Office action, the Examiner did not respond to applicant's comments pertaining to this rejection.

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Applicant maintains the position that the first and second fluid flows are not used to move the transport device through the connecting element. The first and second fluid flows are provided for the purpose of keeping the opposing fluid from entering the respective vessel. Therefore, the claims have not been amended to overcome the rejection.

In item 5 on page 3 of the Office action, claims 1 and 3-7 have been objected to as being indefinite under 35 U.S.C. § 112.

More specifically, the Examiner has stated that there is no indication that fluid flow is required. The Examiner stated that "zero" flow is supported by the claim language. Furthermore, in the final Office action the Examiner stated that "By Webster's very definition of 'maintaining' one can carry on, keep up or continue a fluid flow to be "zero". The term 'maintaining' does not preclude 'zero'."

Applicants respectfully disagree with the Examiner for the following reasons. First, claim 1 recites "maintaining a first fluid flow out of the first vessel into the first part of the connecting element" and "maintaining a second fluid flow flowing out of the second vessel in a second part of the

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connecting element". Therefore, a "zero" flow is precluded because the claim recites flow out of the respective vessels and a "zero" flow would not and cannot flow out of the vessels because "zero" flow does not flow at all. Therefore, the claim language of claim 1 dictates that there is and must be a flow greater than "zero". Moreover, it is noted from Webster's Third New International Dictionary that the word "flow" (used in claim 1) designates the characteristic movement of a fluid, gentle or rapid, copious or meager, showing unbroken continuity. The example states "gentle or rapid, copious or meager" but not "zero", as suggested by the Examiner. Accordingly, the "maintaining a first fluid of flow out of..." and "maintaining a second fluid flow flowing out of...", as recited in claim 1, has the meaning of: keeping up, carrying on, or continuing the characteristic of movement of the fluid, be it meager or copious, gentle or rapid. The Examiner's position contradicts the very definition of "flow" as used in claim 1. Accordingly, the fluid flow being "zero" as suggested by the Examiner is precluded. Therefore, the Examiner's rejection under 35 U.S.C. § 112 is in error.

Applicant thanks the Examiner for his courtesy during two telephone conversations with counsel on March 31, 2004 and April 1, 2004. During the telephone conversations the Examiner stated that this case, and in particular the above-

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discussed rejection was reviewed by his supervisor and other primary Examiners. Furthermore, the Examiner stated that without amendment to claim 1 he would not allow the case. In the event that the Examiner is not convinced by the above-provided arguments, applicant asks if the Examiner would be agreeable to allowing the case based on the following amendment to the third and fourth paragraphs of claim 1:

maintaining a first fluid flow greater than zero out of the first vessel into the first part of the connecting element;

maintaining a second fluid flow greater than zero flowing out of the second vessel in a second part of the connecting element.

In item 7 on page 3 of the Office action, claims 1 and 3-7 have been rejected as being fully anticipated by Desmarchais et al. (U.S. Patent No. 3,294,453) (hereinafter Desmarchais) under 35 U.S.C. § 102.

Based on the fact that claim 1 does preclude "zero" flow, the Desmarchais reference does not show maintaining a fluid flow out of the first vessel into the first part of the connecting element, maintaining a second fluid flow flowing out of the

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second vessel in a second part of the connecting element, as recited in claim 1 of the instant application.

Accordingly, neither Desmarchais nor any other reference of shows the steps of claim 1. Claim 1 is, therefore, patentable over the art and since all of the dependent claims are ultimately dependent on claim 1, they are patentable as well.

In view of the foregoing, reconsideration and allowance of claims 1 and 3-7 are solicited.

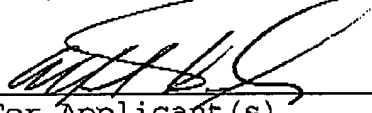
In the event the Examiner should still find any of the claims to be unpatentable, counsel respectfully requests a telephone call so that, if possible, patentable language can be worked out.

If an extension of time for this paper is required, petition for extension is herewith made.

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Please charge any other fees which might be due with respect  
to Sections 1.16 and 1.17 to the Deposit Account of Lerner &  
Greenberg P.A., No. 12-1099.

Respectfully submitted,

  
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For Applicant(s)

AKD:cgm

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